No. [illegible]

IN THE [illegible]

EXCELSIOR [illegible] COMPANY,

Appellant.

vs.

PACIFIC BRIDGE COMPANY
and CHARLES P. ALLEN,

Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Washington, Northern Division.

Motion to Advance Cause, Notice of Said Motion, and Brief of Appellant upon Said Motion.

W. A. ACKER and
L. B. BACON,
Solicitors for Appellant.

Filed , 1901.

Pacific Sheet & Tin Plate Printing Co., S. F.

THE SUPREME COURT

OF THE

UNITED STATES.

October Term 1901.

EXCELSIOR WOODEN PIPE COMPANY,

Appellant,

vs.

PACIFIC BRIDGE COMPANY AND CHARLES P. ALLEN,

Appellees.

No. 375.

Motion to Advance Case.

Comes now the appellant, above named, by its counsel, N. A. Acker, Esq., and L. S. Bacon, Esq., and moves the Court to advance the above entitled case. The facts and objects of this motion are, briefly stated, these:

This is an appeal under Section 5 of the Act of March 3, 1891, from the Circuit Court of the United States for the District of Washington, Northern Division, in the case of Excelsior Wooden Pipe Company, complainant, vs. Pacific Bridge Company and Charles P. Allen, respondents, No.

834, wherein the only question in issue is the question of the jurisdiction of the Court below, and appellant desires an early determination of said question, by advancing said appeal upon the calendar under the provisions of Rule 32 of this Court, as promulgated March 10, 1890, and amended November 28, 1892.

N. A. ACKER,

L. S. BACON,
Solicitors for Appellant.

To A. R. TITLOW, Esq.,
W. H. BOGLE, Esq., and
CHARLES RICHARDSON, Esq.,
Solicitors and Counsel for Appellees.

You will please take notice that on Monday, the 4th day of November, 1901, at the opening of the Court, or as soon thereafter as counsel can be heard, appellant above named will make and present to the Supreme Court of the United States the foregoing Motion to Advance Case, and will submit said motion to said court for its decision.

Annexed hereto is a copy of the brief or argument to be submitted with said motion in support thereof.

N. A. ACKER,

and L. S. BACON,
Solicitors for Appellant.

The Supreme Court of the United States,
October Term 1901.

EXCELSIOR WOODEN PIPE COMPANY,
Appellant,

vs.

PACIFIC BRIDGE COMPANY AND CHARLES P. ALLEN,
Appellees.

No. 375.

Brief or Argument on Motion to Advance Case.

This is a motion to advance the case under Rule 32.

The appeal is from the Circuit Court of the United States for the District of Washington, Northern Division, from a final decree, dismissing the Bill of Complaint for want of jurisdiction.

The Bill of Complaint was filed March 23, 1900. (Printed Record, page 1.) The answer was filed June 9, 1900. Replication was filed June 21, 1900. Time having expired under Equity Rule 69, respondents filed a motion, October 18, 1900, for an order extending time to take testimony. (Printed Record, page 28.) This motion was submitted October 29, 1900, and taken under advisement by the Court. (Page 33).

Complainants, on November 2, 1900, filed a motion for a Decree on the Pleadings, and set it for hearing on November 5, 1900. (Page 34).

On said last named date, to-wit, November 5, 1900, the Court, after hearing, at its own request, arguments on the question of its jurisdiction, and without hearing any argument upon or considering either the respondents' motion for an Extension of Time, or complainant's motion for a Decree on the Pleadings, or deciding either motion, made and entered the final decree, (page 38), wherein it was stated that "it appearing to the satisfaction of the Court, upon an examination of the pleadings herein, that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this Court, and that this Court should not further exercise jurisdiction, it is, therefore, Ordered and Decreed that said suit be, and the same is, hereby dismissed for want of jurisdiction."

Thereafter, December 3, 1900, complainant perfected an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, assigning as errors the failure of the Court to pass upon the two motions, as well as the dismissal of the suit for want of jurisdiction. (Pages 38–41.)

This appeal was duly docketed December 14, 1900, as No. 668, in said Circuit Court of Appeals.

Thereafter, Jan. 28, 1901, appellees filed in said Court of Appeals a Motion to Dismiss the Appeal, on the ground that said United States Circuit Court of Appeals had no jurisdiction "to hear and determine the question presented by the record herein for determination, for the reason that the order of the Circuit Court of the United States, from which such appeal is prosecuted, was and is an order dismissing said cause solely for want of jurisdiction in said Circuit Court to hear and determine the same, and in which order no other question was involved, nor determined by said Circuit Court; and this Court is without authority to exercise appellate jurisdiction to review by appeal a final decision of the Circuit Court in which decision the jurisdiction of that Court was the sole question in issue and decided." (Page 44.)

The Circuit Court of Appeals, thereafter, on May 6, 1901, granted said motion to dismiss, and did dismiss, the appeal, on the ground that the sole question at issue and the question decided by the Court below was a question of

jurisdiction. The Court of Appeals handed down a written opinion, which will be found in the record (page 45), and which is reported in 109 Federal Reporter, 497.

The mandate dismissing the appeal was duly issued (page 43), and was filed in the lower Court May 27, 1901.

On the same day, May 27, 1901, after said mandate was filed, complainant, present appellant, perfected, under Rules 35 and 36 of this Court, promulgated May 11, 1891, this appeal to the Supreme Court of the United States, assigning as the only and sole errors of the Court below the holding of said Court that it had no jurisdiction of said suit, and dismissing said suit for want of jurisdiction. (Pages 47–52.)

From the foregoing, it will be seen that the only and sole question involved in this appeal is a question of jurisdiction. The transcript shows that no other question was decided; the decree of the lower Court shows on its face that only a question of jurisdiction was involved and decided; and, finally, the dismissal of the appeal by the Circuit Court of Appeals, and the opinion of said Court therein, practically made it the law of the case that no question is involved other than that of jurisdiction of the lower Court, and that said question is the sole question in issue.

The present appeal being taken direct from the Circuit Court to this Court, under Section 5 of the Act of March 3, 1891, in accordance with Rules 35 and 36 of this Court, and the only question in issue being the question of the jurisdiction of the Court below, the present motion to advance is proper under Rule 32 of this Court, as amended November 28, 1892.

Respectfully submitted,

N. A. ACKER,

L. S. BACON,
Solicitors for Appellant.